IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.06.2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.21836 of 2001 & W.P.M.P. No.32314 of 2001

1.D. Meganathan
2.A. Ganesan
3.A. Alagu
4.V.V. Gopal
5.M. Rathinam
6.M. Dhanapal
7.S. Rajan
8.Sundari
9.M. Gopi
10.M. Suresh
11.M. Arulkumar
12.J. Rayappan
13.S. Dheenadayalan
14.M. Devasundaram
15.C. Kalavathy
16.C. Kamaladevi
17.C. Hemavathi
18.C. Boopathy
19.C. Nagaraj
20.K. Vijayakumar
21.D. Ganesan
22.A.H.I. Rajan
23.R. Kumarasamy
24.A. Chellaiah
25.G. Panneerselvam
26.T. Savithri
27.T. Lakshmi
28.T. Renuga
29.T. Murugan
30.M. Sindhamathar
31.S. Syed Abdul Rahim
32.R. Krishnan
33.M. Kuppan
34.S. Chinnikrishnan
35.S. Kanniappan
36.G. Boobalan
37.K. Dhamodharanpillai
38.V.J. Singarayan
39.A. Elango
40.K.R. Mohan
41.P. Vembuli
42.P. Govindarajan
43.C. Munusamy
44.C. Balasubramanian
45.B. Sekar
46.D. Thiagarajan
47.S. Rathinam

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48.S. Ongaram
49.S. Abdul Majith
50.P. Muthiah
51.P.K. Parameswaran
52.A. Rukmanganathan (deceased)
53.S. Selvaraj
54.R. Anbalagan
55.P. Chandrasekaran
56.M. Renu
57.D. Satharoh
58.K. Subramani
59.P. Thirumoorthy (deceased)
60.R. Ramani
61.R. Thangaraj
62.R. Sampath
63.R. Jeeva
64.R. Raveendara
65.R. Vasantha
66.Kalaiselvi
67.T. Deepa
68.T. Sathis Kumar
69.T. Jayakumar (minor) Petitioners

(Petitioners 60 to 65 are substituted in the place of deceased 52nd petitioner as per order dated 18.04.2006 in WPMP No.11254 of 2006 by MJJ)

(Petitioners 66 to 69 are substituted in the place of deceased 59th petitioner as per order dated 18.04.2006 in WPMP 11253 of 2006 by MJJ)

Vs.

1 The Presiding Officer
Industrial Tribunal, Madras

2 The Management
W.S. Industries India Ltd.
Porur, Madras - 600 116 Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus after calling for the records relating to the Award dated 24.05.2001 in Complaint No.3 of 1991 passed by the first respondent, quash that portion of the award depriving full back-wages and other attendant benefits and consequently direct the second respondent to pay the petitioners full back-wages and other attendant benefits.

For petitioner Mr. D. Hariparanthaman

For 2nd respondent Mr. N. Manoharan

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This petition has been filed seeking to quash that portion of the award dated 24.05.2001 in Complaint No.3 of 1991, declining full back-wages and other attendant benefits and for a direction to the second

respondent to pay the same to the petitioners along with other attendant benefits.

2. The case of the petitioners, in brief, is as under:

a. In order to have their interest protected, some of the workers of the second respondent Company formed a union styled "W.S. Industries National Workers Union" (in short "the Union") which was affiliated to INTUC. When the second respondent Company introduced contract labour in place of permanent workers, the objection of the Union towards such move was futile. Hence, the Union obtained an order of injunction restraining the second respondent Company from employing contract workmen in place of permanent workmen and yet another injunction order was obtained restraining the second respondent Company from removing machinery, raw materials, unfinished goods, etc. from its factory premises. The efforts of the second respondent Company to break the Union was brought to the notice of the Labour Commissioner who advised the former to pay Rs.2,000/- as advance to all workmen irrespective of their union affiliation and since no advance was paid to the union members, they organised a cycle rally on 01.08.1990 from 7 am to 11 am and reported to duty as soon as the rally was over and as such, there was no dislocation in work. Still, the second respondent Company unilaterally imposed an illegal lockout from 02.08.1990.

b. When the industrial dispute raised by the union against the illegal lock-out was pending, the second respondent company lifted the lock-out from 03.09.1990 and all the workmen, except 73 of them, were called for work in a phased manner and these 73 workers were not allowed to enter the factory since their names were not in the lists put up by the Management in the notice board, thereby showing a discriminatory treatment. As against the illegal termination of 73 workers, the union preferred a joint complaint which was numbered as Com. No.3 of 1991 in which an award was passed on 28.04.1992 directing the second respondent Company to reinstate 73 workmen and pay 25% of back-wages and the industrial dispute regarding lock-out was referred to the first respondent for adjudication and the same was numbered as I.D. No.2 of 1992. But, the second respondent Company, instead of implementing the award in Com. No.3 of 1991, filed a writ petition in W.P. No.6073 of 1993 and obtained stay of the award dated 28.04.1992 which was subsequently made absolute on condition that it should deposit 50% of the back-wages ordered and should also pay last drawn wages. During the pendency of this writ petition, several workers were reinstated leaving a balance of 49 workmen and in the meanwhile, in I.D. No.2 of 2002, an award came to be passed declaring that the lock-out imposed from 02.08.1990 to 02.09.1990 was illegal and that the workmen were also

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entitled to wages, other allowances, continuity of service and all other benefits and this order was not challenged by the second respondent Company. Despite this order, these 49 workmen were neither reinstated nor paid wages and other benefits for the period of lock-out. While this was so, this Court set aside the award dated 28.04.1992 passed by the first respondent Tribunal in Com. No. 3 of 1991 and the remanded the matter to the first respondent Tribunal for consideration afresh.

c. Thus, when the case of 49 workmen was under consideration by the first respondent Tribunal, as per its suggestion, the second respondent Company filed a compromise memo dated 27.12.2000 agreeing to reinstate the workmen in a phased manner and reserved their right to argue as to the maintainability and back-wages alone. Thus, while 41 workmen were reinstated, 5 workmen were superannuated and 3 workmen died, the complaint was restricted with regard to maintainability, termination and back-wages and this being the position, the first respondent Tribunal, though opined that denial of employment from 03.09.1990 was deliberate, discriminatory and a case of termination for misconduct, apportioned 50% of the blame on the part of the workmen and thus ordered 50% of back-wages from 12.03.1997 to 31.12.2000 and that the payment received by the workmen during pendency of the writ petition will be deducted from the 50% of back-wages they are entitled to. As against this order, the present writ petition.

3. Mr. Hariparanthaman, learned counsel for the petitioners has contended that when the second respondent Company did not come forward to reinstate the workmen even after the award in I.D. No.2 of 1992 declaring the lockout as illegal, the first respondent Tribunal is wrong in apportioning 50% of the blame on the part of the workmen for not having approached the second respondent Company to fit them in their jobs soon after the award in I.D. No.2 of 1992 declaring the lockout as illegal. It is also his contention that the first respondent Tribunal is wrong in ordering to deduct 17-B wages from the 50% of back-wages.

4. The learned counsel for the petitioners has contended that as per Section 33(2)(b) of the Industrial Disputes Act, during the pendency of any proceedings in respect of an industrial dispute, the employer may, for any misconduct not connected with the dispute, discharge or punish that workman, whether by dismissal or otherwise, provided an application has been made by the employer to the authority before which the proceedings is pending for approval of the action and since no such approval was obtained by the second respondent Company, it has violated Section 33(2)(b) of the Industrial Disputes Act and the petitioners deserve to be paid full back-wages. In support of this contention, he has relied on:

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a. the judgment of this Court reported in 2000(3) LLN 301 in the case of Management of Cheran Transport

Corporation, Coimbatore and another vs. G. Balasubramaniam and another

b. the Supreme Court decision reported in (2002) (2) SCC 244 in the matter of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and others

5. In addition, further reliance has been placed on a judgment of this Court reported in 2003 (3) LLN 355 in the matter of Management of Sri Ganapathy Mills Company Ltd., Tirunelveli and Presiding Officer, Special Industrial Tribunal, Madras and another and the relevant para reads as under:

> "The law is well settled that non-compliance of the condition contained in the proviso to S.33 (2)(b), which is mandatory in nature, would render the order of dismissal void and the effect of which shall be that the order of dismissal had never been passed and the employee would be deemed to have continued in service. In the present case, admittedly, the petitioner/management did not comply with the condition under S.33(2)(b) while rendering the order of the dismissal of the second respondent/workman and hence, it shall be that the order of the dismissal has never been passed and the second respondent/workman will be deemed to have been in service and entitled to all the benefits available to him. The second respondent/workman is entitled for the relief prayed for in his writ petition . . "

6. Similarly in the unreported judgment of this Court in W.P. No. 15585 of 2004 relied on by the counsel for the petitioners, it has been held in paragraph 10 as follows:

> "In view of the non-compliance of the said mandatory provisions, it can be stated that the order of dismissal has never been passed and the petitioners would be deemed to have been in service and entitled to all the benefits available to them. Therefore, following the decisions of the Apex Court as well as this Court referred to above, this Court is of the considered opinion that it is a fit case where the writ what is asked for by the petitioner to quash the order of the Industrial Tribunal, has got to be given."

7. Per contra, the main contention of Mr. N. Manoharan, learned counsel for the second respondent Company is that when the workmen involved in the dispute submitted individual letters agreeing to report to work and to accept the decision of the first respondent Tribunal as regards the issue of back-wages, they are estopped from challenging its award in respect of ordering 50% of back-wages. He has further contended that there was no termination of service of the petitioners, either by dismissal or otherwise, mandating payment of full back-wages and as such, the first respondent Tribunal had judiciously exercised

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its jurisdiction in awarding 50% of back-wages and hence, its order does not call for any sort of interference.

8. Relying on the judgment of the Supreme Court reported in 2003 (5) ALT 94 (SC) in the case of M.P.State Electricity Board vs. Jarina Bee in which the judgment in P.G.I. of Medical Education and Research vs. Raj Kumar was relied upon, the counsel for the second respondent Company has contended that payment of back-wages has got a discretionary element involved in it and it depends upon the facts and circumstances of the case despite there being a statutory sanction to direct payment of backwages in its entirety. The relevant paras of the said judgment reads as under: (paras 7 & 9)

". . . Again at para 12, this Court observed:

> "12. Payment of back-wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each and no strait-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back-wages in its entirety."
>
> Applying the legal principles the inevitable conclusion is that the High Court committed an error in holding that the award of full back-wages was the natural consequence."

9. Even in its judgment reported in (2002) 6 SCC 41 in the matter of Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya and another, the Supreme Court has held that payment of back-wages is a matter of sheer discretion and it depends on the facts and circumstances of each case.

10. I have carefully considered the rival submissions made by the learned counsel on either side and the points for consideration in this petition are whether the petitioners are entitled to receive full back-wages as against 50% as awarded by the Tribunal and whether the Tribunal is correct in ordering recovery of 17-B wages from 50% of back-wages.

11. Admittedly, the lockout imposed by the petitioner is illegal. This is because the award of the Tribunal in I.D. No.2 of 1992 declaring that the lockout as illegal has not been challenged by the second respondent Company and as such, the award of the Tribunal has become final. Hence, I am not inclined to deal with that aspect.

12. Coming to the aspect of finding of the Tribunal in apportioning 50% blame on the part of the workmen for not having approached the second respondent Company to fit them in the job and thereby awarding 50% back-wages, the counsel for the petitioners has contended that the Tribunal has failed to see that the workmen cannot seek reinstatement when there was a stay against the award dated 28.04.1992 in and by which reinstatement and payment of 25% back-wages were ordered. This argument of the counsel for the petitioners cannot be sustained for the reason that the second respondent Company cannot be precluded or curtailed from filing the writ petition challenging the above-referred to award of the Tribunal which has in fact, got an order

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of absolute stay from this Court and even the said award of the Tribunal has been set aside in the writ petition and the matter remitted to the Tribunal for consideration afresh. Secondly, as has already been seen from the judgments of the Supreme Court reported in 2003 (5) ALT 94 (SC) and (2002) 6 SCC 41 relied on by the counsel for the second respondent Company (supra), it is made abundantly clear that setting aside of the order of termination will not automatically make the workmen entitled to receive full back-wages. It is purely the discretion of the Tribunal to decide the extent of back-wages to which the workmen are entitled, by analysing the facts and circumstances of each case and this power of discretion has been judiciously exercised by the Tribunal, which is a court of facts, in fixing 50% back-wages for the workmen, despite the existence of a statutory direction to grant back-wages in its entirety and this finding of the Tribunal, in my opinion, is in accordance with the rulings of the Supreme Court as already discussed above. In that view of the matter, the finding of the Tribunal with regard to payment of 50% of back-wages is confirmed and the first point for consideration is answered in favour of the second respondent Company and against the petitioners.

13. However, as far as the finding of the Tribunal in connection with deduction of 17-B wages from 50% back-wages is concerned, I am of the view that it is not just, fair and equitable for the reason that the petitioners have been awarded only 50% of the back-wages and not the back-wages in its entirety. Had they been awarded the back-wages in its entirety, of course, there is every justification in deducting the 17-B wages. Since it is not in dispute that the lockout imposed by the second respondent Company is illegal in view of the fact that there is no challenge to that effect and it has become final and the finding of the Tribunal that the workmen are entitled to 50% of back-wages is confirmed in the earlier paragraph, taking into consideration the overall factors, particularly the facts that (i) the blame is on the side of the second respondent Company too and (ii) this Court, by an interim order has granted an order of interim injunction restraining the second respondent Company from recovering or deducting any amount paid as 17-B wages, in order to give equitable remedy and to meet the ends of justice and with a view not to put the petitioners into any kind of inconvenience, the order of the Tribunal insofar as ordering deduction of payment received by the workmen during the pendency of W.P. No.1673 of 1993, from 50% backwages, without giving due reasoning, is quashed and the second point for consideration is answered in favour of the petitioners and against the second respondent Company.

In fine, the writ petition stands allowed in part, without any order as to costs. Consequently, connected W.P.M.P. is closed.

cad

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Asst.Registrar

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Sub Asst.Registrar

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To

The Presiding Officer
Industrial Tribunal, Madras

+ 2 ccs to MR. A. Krishnaroa, Advocate SR No.33523

+ 1 cc to Mr. D. Hariparanthaman, Advocate SR No.33751

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order in
W.P. No.21836 of 2001

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